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HIGH COURT OF CHHATTISGARH AT BILASPUR

Second Appeal No. 309/2005

Nandlal

Vs.

Mohan Sai and others

Single Bench: Hon'ble Shri **Dilip Raosaheb Deshmukh**, J.

Post for Order: 24.01.2007

Sd/-
Dilip Raosaheb Deshmukh
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Second Appeal No. 309/2005

Appellant/Defendant : Nandlal
S/o Late Jagmohan,
R/o Village : Manipur,
P.S. & Tahsil Ambikapur,
Distt. Sarguja (C.G.)

Vs.

Respondents/plaintiffs :

1. Mohan Sai, S/o Somaru
   Aged 45 years.
   Caste : Uraon.
2. Gharbharan S/o Bandhan,
   Aged 42 Years.
   Caste : Uraon.
3. Shiv Prasad S/o Etava,
   Aged 30 Years
   Caste : Uraon.
4. Ramdeo S/o Etava
   Aged 25 Years
   Caste Uraon
   All are R/o Manipur, P.S. and Tah. Ambikapur, Distt. Sarguja (C.G.).

Present :

Shri Manoj Paranjape, counsel for the appellant/defendant.

Shri A.K. Prasad, counsel for the respondents/plaintiffs.

JUDGMENT
(Delivered on 24.01.2007)

Per Dilip Raosaheb Deshmukh, J.

Aggrieved by the judgment and decree passed by Third Additional District Judge, Ambikapur in Civil Appeal No. 39-A/2002 dated 8.4.2005 whereby the judgment and decree passed on 21.1.1997 by the Court of Civil Judge, Class-II, Ambikapur in Civil Suit No. 74-A/1991 decreeing the plaintiffs' suit was affirmed, the defendant/appellant has preferred this second appeal.

title on the appellant/defendant. On these premises, it granted a decree in favour of the respondents/plaintiffs for a declaration of title and possession of the suit land while declaring the sale deed dated 21.8.1968 as a void document. In Civil Appeal No. 39-A/2002, the learned Third Additional District Judge affirmed the findings recorded by the learned lower Court.

5. Shri Manoj Paranjape, learned counsel for the appellant/defendant argued that the learned Lower Court erred in placing the burden of proof of execution of document Ex. D-1 on the defendant. It was also contended that the admission made by Kariya Ram PW-3 in para-5 that Duli had pre-deceased Nohri demolished the plaintiff case in toto. It was also contended that the inference drawn by the lower court that if Nohri was alive at the time of settlement, the suit land would have been settled in his name was erroneous. Merely on the basis of such an inference, the lower court ought not to have brushed aside the admission made by Kariya Ram PW-3 and the evidence adduced by the defendant. No other point was urged.

6. I have considered the arguments advanced by the learned counsel for the appellant/defendant. It is incorrect to say that the learned Lower Court had placed the burden of proof on the defendants since para-10 of the judgment clearly shows otherwise. Etwa, attesting witness of the sale deed could not be examined since dead. The executor, Nohri was also dead. The only attesting witness Gharbaran was examined by the respondents/plaintiffs as PW-2 who deposed that Nohri had pre-deceased Duli. Duli was in possession of the suit lands till her death. He also deposed that he did not witness the sale transaction. According to him, the suit land was settled in the name of Duli at the time of Bandobast. This testimony remained wholly unrebutted in cross-examination. Jeevan

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Ram PW-4 also testified that Nohri had died during time of the erstwhile ruler and Duli was thus recorded as owner of the suit land and was in possession thereof till her life time. He also deposed that the last rites of Duli were performed by the respondents/plaintiffs. This testimony also remained unrebutted in cross-examination. The plaintiff also examined a witness Kariya Ram (PW/3) who deposed in para-1 that Nohri had died during settlement and the suit land was settled in the name of Duli. However, in cross-examination he also stated that he could not say when Duli died. His statement that Nohri was in possession of the suit lands after death of Duli thus belied his own testimony and had to be brushed aside from consideration. Mohar Sai (PW/1), the plaintiff deposed that at the time of the execution of the registered sale deed, Nohri was not alive who had died before the settlement and the name of Duli was therefore recorded over the suit lands. In cross-examination the evidence of this witness also stood unrebutted.

7. As against this, the defendant examined document writer Abdul Aziz (DW/6). The sale deed Ex. P-1 bears the thumb impression of the executor and also of both the attesting witnesses. An endorsement as to who had identified the executor as Nohri is absent in the document. A pertinent fact which emerges in para 5 of his testimony is that at the time of the execution of the sale deed the vendor had produced a document showing that the suit land was recorded in the name of Nohri. This is nothing but a complete falsehood being contrary to the pleadings of the parties that at no point of time Nohri was recorded as owner of the suit lands. The defendants admitted that Duli was the recorded owner of the suit lands since the time of settlement and pleaded that on her death Nohri became the owner. The fact that the suit lands were settled in the name of Duli is also indicative of the fact that her husband Nohri pre-deceased

her. Had Nohri executed the sale deed vide Ex. D-1 the appellant/defendant would not have waited for a number of years i.e. till 1986 for getting his name recorded over the suit lands. This also goes to show that Nohri had died prior to the settlement and the defendant waited till death of Duli for getting his name mutated over the suit lands. Defendant Jagmohan DW-2 also admitted the fact that the suit land was recorded in the name of Duli at the time of execution of the sale deed. He has also admitted in para-16 that his application for mutation was rejected upon an objection filed by the respondents/plaintiffs. No reason has been assigned by the defendants as to why his application for mutation was rejected? The document Ex. D-1 is a highly suspicious document since it does not bear an endorsement that the attesting witness had identified the executor as Nohri. Another witness Darbari Lal (DW-5) also admitted in para-3 that Nohri had expired at the time of settlement which fully supports the evidence led by the plaintiffs. Pujeri (DW-4) also admitted in para-8 that at the time of settlement Nohri had died and therefore, he would not say if the defendant had by making some other person impersonate Nohar had got the sale deed executed or not? Awadhesh (DW/3) has also admitted in para-11 that the suit land was recorded in the name of Duli.

8. The evidence led by the plaintiff clearly goes to prove that Nohri had died before the settlement and the suit land was recorded in the name of Duli thereafter. I am of the considered that the plaintiffs had discharged the burden of proof that Nohri had died prior to the settlement and was not alive on 21.8.1968 and therefore, the sale deed Ex. D-1 dated 21.8.1968 is a forged document and void ab- initio.

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9. Having thus considered the evidence led by the parties on record, I am of the considered opinion that the concurrent finding of fact recorded by both the Courts below is based on a proper appreciation of evidence and there is nothing on record to show that the finding recorded by both the Courts below is contrary to law or perverse. Since a concurrent finding of fact has been recorded by both the Courts below in favour of the respondents/plaintiffs, I am of the considered opinion that no substantial question of law is involved in this appeal.

10. As a result, this appeal is dismissed at the stage of admission. No order as to costs.

Sd/-
Dilip Raosaheb Deshmukh
Judge

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